IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 27TH OCTOBER 2006 / 5TH KARTHIKA 1928

WP(C).No. 12636 of 2004(D)

PETITIONER:

K. DEVADASAN, S/O. RARU, AGED 53 YEARS,
KARIPALA HOUSE, MANNUR P.O., KADALUNDI,
KOZHIKODE.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, KOZHIKODE.

2. SPECIAL DEPUTY TAHASILDAR,
(ARREARS COLLECTION), KOZHIKODE-4.

3. SECRETARY, KOZHIKODE BLOCK PANCHAYAT,
KOZHIKODE.

BY G.P. SRI.SHYSON P.MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF FIR IN CRIM NO.132/2001 OF FEROKE POLICE STATION.

P2: TRUE COPY OF LETTER ISSUED BY THE B.D.O., KOZHIKODE DT.22.5.2002.

P3: TRUE COPY OF REPLY DT.19.6.2002.

P4: TRUE COPY OF THE NOTICE DT.14.4.2003.

P5: TRUE COPY OF NOTICE U/S.33 ON 18.11.2003.

P6: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE R1.

RESPONDENT'S EXHIBITS:

R3(a): TRUE COPY OF THE AGREEMENT DT.15.10.99.

R3(b): TRUE COPY OF THE STATEMENT SHOWING THE LIABILITY FOR WHICH PROCEEDINGS UNDER THE RR ACT HAS BEEN INITIATED.

R3(c): TRUE COPY OF THE CIRCULAR DT.27.3.2003.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.12636 of 2004

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Dated this the 27th day of October, 2006.

JUDGMENT

The petitioner is challenging Ext.P4 revenue recovery notice for recovering an amount of Rs.2,50,538/- towards advance paid for execution of work, interest thereon and compensation for breach of agreement. The petitioner as convenor of the Peoples Planning Programme undertook construction of the road for the third respondent-Panchayat. It is admitted that petitioner collected an advance of Rs.50,000/- initially and later another Rs.60,000/- pursuant to agreement dated 15.10.1999 produced as Ext.R3(a). It is seen from clause 13 that petitioner has undertaken to execute the work failing which third respondent could rearrange the work at the risk and cost of the petitioner. The petitioner admitted receipt of advance as stated above. However, petitioner's case is that work could not be completed because the bitumen purchased by him namely, 24 barrels of tar were stolen. However, it is conceded in the counter that petitioner did not even inform about theft of bitumen to the third respondent and such a story is put up by the petitioner only after receipt of notice from the third respondent about non-execution of work, that too, after one year of the alleged theft. In the circumstances, the theory of theft appears to be a bogus story. Moreover, there is nothing to indicate that risk of loss of materials is to the account of the awarder. Therefore, even if theft has taken place, petitioner has to bear the loss. Unlike

normal contracts, projects coming under Peoples Planning Programme are executed by voluntary committees under a convenor to serve a public purpose and not for the purpose of profit. Therefore, any breach of the contract should be taken serious note of by any authority and this court has taken the view that the convenor in such cases should be held responsible for misappropriation and breach of trust. In the circumstances, the third respondent is entitled to recover atleast advance paid to the petitioner and the interest as he has admittedly not executed the work. The details of demands are covered by Ext.R3(b). The respondents besides demanding advance with interest, have demanded compensation towards value of bitumen and interest thereon. I do not think the said demand is recoverable because the Panchayat has not rearranged the work in terms of clause 12 and sought for recovery of the differential cost which they were entitled to under the contract. In the circumstances, W.P. is disposed of modifying the demand that is recoverable from the petitioner to Rs.1,10,000/- together with interest at 15% per annum from date of payment till date of recovery.

2. However, I feel petitioner can be given one more opportunity to procure bitumen and arrange for completion of work within a period of four months from now. If petitioner wishes to avail this opportunity, the petitioner should execute Bank Guarantee in favour of third respondent for Rs.1.5 lakhs authorising the third respondent to encash the same in case of petitioner's failure to complete the execution of work within three months from today. If petitioner executes the work

within four months as stated above, then there will be direction to the third respondent to release the balance funds if any due for the work. The Bank Guarantee should be furnished within two weeks from the date of receipt of a copy of this judgment, if petitioner wants to avail the benefit or otherwise, recovery will be continued. I also make it clear that public sector companies supplying bitumen should supply the same to the petitioner on a priority basis if petitioner undertakes to complete the work as above and produces concurrence letter from the third respondent.

C.N.RAMACHANDRAN NAIR
Judge

pms